

# SINHA LAW

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November 25, 2017

Via email

NOV 29 2017

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**Re: First Supplemental 60-Day Notice of Violations and Intent to File Suit Under the  
Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of CalMat Co., a Vulcan Materials Company subsidiary, doing business as Shamrock Materials, Inc. – Napa Plant:

The California Environmental Protection Association ("CEPA") provides this First Supplemental 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the CalMat Co. facility located at 999 Kaiser Road in Napa, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations and intent to file suit ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California San Francisco Bay Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

Notice History

CEPA previously provided its initial Notice of violations to Shamrock Materials Company on September 24, 2017. This Notice includes additional violations.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into the San Pablo Bay, by way of the Tulucay Creek and the Napa River.

CalMat Co., dba Shamrock Materials, Inc. Napa Plant (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the San Francisco Bay RWQCB Water Quality Control Plan or "Basin Plan".

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

The Discharger filed a Notice of Intent (“NOI”) on October 23, 2017, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification (“WDID”) number 2 28I027407.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the “General Permit”) relating to industrial activities at the Facility.

## **II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

### **A. Facility Operations**

CalMat Co., dba Shamrock Materials, Inc. – Napa Plant is a Ready-Mix Concrete Batch Plant. Site operations are covered under Standard Industrial Code (“SIC”) 3273, Ready Mix Concrete.

Site operations take place primarily outdoors on a site that slopes towards storm drains which eventually enter the navigable waters of the San Pablo Bay, via the Tulucay Creek and the Napa River, which are in close proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice can discharge to the Pacific Ocean.

### **B. CalMat Co., dba Shamrock Materials, Inc.’s Specific Violations**

#### ***1. Failure to Timely Apply for Permit Coverage***

The Discharger failed to timely apply for coverage under the General Permit by March 13, 2017, in violation of Sections II.B.1, II.C.1, II.C.2, and XXI.A of the Permit.

Dischargers that discharge storm water associated with industrial activity to waters of the United States are required to obtain a General Permit and meet all applicable requirements of this General Permit. When ownership changes, the prior Discharger (seller) must inform the new Discharger (buyer) of the General Permit applications and regulatory coverage requirements. The new Discharger must certify and submit new Permit Registration Documents (“PRDs”) via the Storm Water Multiple Application and Report Tracking System database (“SMARTS”) to obtain coverage under this General Permit no later than seven (7)

days before commencement of operations. Should the new Discharger fail to do so, all subsequent discharges are in violation of the Clean Water Act.

On March 20, 2017, CalMat Co., a Vulcan Materials Company subsidiary, officially purchased Shamrock Materials, Incorporated. At the time of purchase, Shamrock Materials, Inc. – Napa Plant was operating under WDID Number 2 28I015399.

CalMat Co. continued to operate the business without any period of suspension of operations as “CalMat Co, dba Shamrock Materials, Incorporated –Napa Plant.” However, CalMat Co. waited until October 23, 2017, to file its application for Permit Coverage, well after CEPA’s first Notice was sent on September 24, 2017. Thus, from the time of its purchase of the Facility on March 20, 2017, until October 23, 2017 (approximately 216 days), CalMat Co. operated the Facility without filing a Notice of Intent to obtain coverage under the General Permit.

Furthermore, the new Discharger failed to develop a compliant monitoring program within seven days prior to commencing operations, which constitutes an additional failure to comply with the regulations of the General Permit.

## *2. Failure to File a Storm Water Pollution Prevention Plan (“SWPPP”)*

Pursuant to Section I.I.54 of the General Permit, the Discharger is required to develop a site-specific SWPPP in accordance with Section X of this General Permit. The SWPPP must include the information needed to demonstrate compliance with the requirements of this General Permit. The SWPPP must be submitted electronically via SMARTS, and a copy be kept at the Facility. SWPPP revisions shall be completed in accordance with Section X.B of this General Permit.

During the period March 20, 2017, through October 23, 2017, the Discharger operated without a SWPPP. The Discharger was notified of the deficiency in a 60-day Notice by CEPA in September of 2017, but nevertheless continued to operate without a SWPPP until October 23, 2017. The Discharger continues to operate with a SWPPP that fails to meet the requirements of the General Permit.

## *3. Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

The Discharger has violated and continues to violate the terms and conditions of the General Permit by failing to identify and/or implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

*4. Failure to Follow Monitoring and Sampling Procedures*

The Discharger has failed since at least March 20, 2017, to conduct monthly and sampling event visual observations pursuant to Section X.I.A of the General Permit, and to complete the Monthly Inspection Forms as indicated in the General Permit.

The Discharger has also failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (“QSE”) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period March 20, 2017, through June 30, 2017 (one analysis was uploaded dated 2/2/17). Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 3/20/17, 4/6/17, and 4/11/17.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII, which provides as follows:

**XVII. CONDITIONAL EXCLUSION - NO EXPOSURE CERTIFICATION (NEC)**

A. Discharges composed entirely of storm water that has not been exposed to industrial activity are not industrial storm water discharges. Dischargers are conditionally excluded from complying with the SWPPP and monitoring requirements of this General Permit if all of the following conditions are met:

1. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
2. All unauthorized NSWDS have been eliminated and all authorized NSWDS meet the conditions of Section IV;
3. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage pursuant to the instructions in Section II.B.2; and,
4. The Discharger has satisfied all other requirements of this Section.

The Clean Water Act prohibits certain discharges of storm water containing pollutants except in compliance with the General permit. Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code, as well as the General Permit, and is grounds for enforcement action against the Facility.

Here, the Discharger violated the Clean Water Act by operating the Facility without obtaining a permit.

*5. Failure to File Annual Report*

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

To date, the Discharger has failed to file an Annual Report for the fiscal year ending June 30, 2017.

*6. Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA

307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

The Discharger failed to apply for permit coverage from March 20, 2017, through October 23, 2017, and thus operated without a permit during that time period. Further, the Discharger has failed to upload sampling and analysis reports to the RWQCB confirming discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Thus, all facility discharges are in violation of the General Permit.

*7. Falsification of Permit Registration Documents (PRDs) Submitted to the RWQCB*

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of



compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On October 23, 2017, the Discharger submitted its initial SWPPP. This Report was signed under penalty of law by Cesar Aranda, the Water Resources Manager for Vulcan Materials Corporation.

The Discharger claimed in its SWPPP that the Facility was under baseline status. The SMARTS database records clearly show that the Facility entered Level 1 status on July 1, 2016, for exceedances in Iron, and continued to be in Level 1 status as of March 20, 2017, the date that CalMat Co took over continuing operations of the Facility. This is referenced in the attached original 60-day Notice.

Pursuant to Section XII.C.2.b, a Facility does not return to baseline status until storm water sample results from four (4) consecutive QSEs sampled subsequent to BMP implementation recommended in a mandatory Level 1 Exceedance Response Action (ERA) Report indicate no additional NAL exceedances for that parameter. The Facility has not met that requirement. In fact, the Facility uploaded only one storm water sample subsequent to entering Level 1 status. That sample, dated February 2, 2017, indicated an exceedance for Iron.

Pursuant to Sections X.G.1.d.ii.a, X.G.1.d.ii.b, X.G.1.d.ii.c, and X.G.1.d.iii of the General Permit, Dischargers are required to report significant spills or leaks that have occurred on site within the previous 5-year period. In Section 2.3.2 on page 2-6 of the Discharger's SWPPP dated October 20, 2017, the Discharger reported "N/A" with regard to significant spills or leaks, indicating that there had been none during the prior five-year period.

The aforementioned sections of the General Permit indicate that in situations where Dischargers are or should be aware of facility discharge history, they are required to include that information in their SWPPP. In this case, CalMat Co. took over the Shamrock Materials - Napa Plant and continued to operate the facility in the same manner as it had been operating, including retaining the Plant Manager. Thus, the Discharger knew or should have known that the Facility had prior discharges that warranted the Facility to be in Level 1 status, and this information should have been included in the Facility SWPPP.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

Potential pollutants from the Facility that may come in contact with storm water include



the following: sediment, iron, grease and oil, cleaning fluids, and Portland cement. The Facility has two (2) designated storm water discharge points, and its storm water discharges indirectly into the San Francisco Bay, via the San Pablo Bay, waters of the United States.

The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

### **III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entity responsible for the alleged violations is CalMat Co., dba Shamrock Materials, Inc. Napa Plant ("the Discharger"), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

### **IV. THE LOCATION OF THE VIOLATIONS**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is CalMat Co., dba Shamrock Materials, Inc. – Napa's permanent facility address of 999 Kaiser Road, in Napa, California, and includes the adjoining navigable waters of the Napa River and the San Pablo and San Francisco Bays.

### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least March 20, 2017, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

## **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
*1645 Willow Street, #150*  
*San Jose, CA 95125*  
*Telephone: (408) 791-0432*  
*Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)*

## **VII. PENALTIES**

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the San Francisco Bay. Members of CEPA use the watershed and the Bay for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger’s violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

## **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

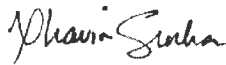
During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of

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First Supplemental 60-Day Notice of Intent to Sue  
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litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



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Xhavin Sinha  
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosures

TABLE 2 – Parameter NAL Values, Test Methods and Reporting Units  
Original 60-day Notice of violations and Intent to Sue

Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Executive Officer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay St # 1400  
Oakland, CA 94612

**TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units**

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18<sup>th</sup> edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

\* Minimum parameters required by this General Permit

\*\*The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.

# SINHA LAW

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September 25, 2017

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Rich Camgros, Ready Mix General Manager  
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Napa, CA 94558

Jeff Nehmens  
Vice President/CEO of Ready Mix  
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PO Box 808044  
Petaluma, CA 94952

Eugene Ceccotti, President  
Shamrock Materials, Inc.  
181 Lynch Creek Way #200  
Petaluma, CA 94954

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Shamrock  
Materials, Inc. – Napa Plant:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Shamrock Materials, Inc. facility located at 999 Kaiser Road (West End of Kaiser Road) in Napa, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California San Francisco Bay Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into the San Pablo Bay, by way of the Napa River.

Shamrock Materials, Inc. (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the San Francisco Bay RWQCB Water Quality Control Plan or "Basin Plan".

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

The Discharger filed a Notice of Intent ("NOI") on August 26, 2016, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2 28I015399.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

## **II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

### **A. Facility Operations**

Shamrock Materials, Inc. – Napa Plant is a Ready-Mix Concrete Batch Plant. Site operations are covered under Standard Industrial Code ("SIC") 3273, Ready Mix Concrete.

Site operations take place primarily outdoors on a site that slopes towards storm drains which eventually enter the navigable waters of the San Pablo Bay, via the Napa River, which is in close proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice can

discharge to the Pacific Ocean.

**B. Shamrock Materials, Inc.'s Specific Violations**

*1. Failure to Certify and Upload Level 1 ERA Report in a Timely Manner*

On July 1, 2016, the Discharger entered Level 1 Status based on Numeric Action Level ("NAL") exceedances for Iron during the fiscal year 2015-2016.

Pursuant to Section XII.C of the General Permit:

**C. Level 1 Status**

A Discharger's Baseline status for any given parameter shall change to Level 1 status if sampling results indicate an NAL exceedance for that same parameter. Level 1 status will commence on July 1 following the reporting year during which the exceedance(s) occurred.

**1. Level 1 Exceedance Response Action ("ERA") Evaluation**

- a. By October 1 following commencement of Level 1 status for any parameter with sampling results indicating an NAL exceedance, the Discharger shall:
- b. Complete an evaluation, with the assistance of a Qualified Industrial Stormwater Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and,
- c. Identify in the evaluation the corresponding Best Management Practices ("BMPs") in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit. Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated.

**2. Level 1 ERA Report**

- a. Based upon the above evaluation, the Discharger shall, as soon as practicable but no later than January 1 following commencement of Level 1 status:
  - i. Revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation;
  - ii. Certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes the following:



1) A summary of the Level 1 ERA Evaluation required in subsection C.1 above; and,

2) A detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.

iii. Certify and submit via SMARTS the QISP's identification number, name, and contact information (telephone number, e-mail address).

The Level 1 ERA Report that the Discharger uploaded into the SMARTS database system was prepared on January 23, 2017. Further, the evaluation was not conducted until January 5, 2017.

## *2. Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced BMPs that comply with the Best Available Technology ("BAT"), and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

The Discharger has violated and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

On July 1, 2016, the Discharger was accelerated to Level 1 Status pursuant to Section XII.C of the General Permit, for exceedances of Iron. Pursuant to the General Permit, the facility was evaluated on January 5, 2017, and a Level 1 Exceedance Response Evaluation Report was completed and certified on January 23, 2017.

The evaluation completed by Matt Donohue of TransTech noted the following deficiencies in BMP implementation at the site as of the date of the evaluation:

On January 5, 2017, the Discharger and the QISP evaluated the facility for industrial pollutant sources at the facility that are or may be related to the exceedance of the NAL of 1 mg/l for iron and found that the most likely sources of iron is cementitious dust located on the ground surfaces, in pavement cracks, in ground-level gutters and swales, in settlement ponds, on exterior walls and structures, and on roofs and in roof gutters, and from corroding exposed steel structures.

On July 1, 2017, the Discharger was accelerated to Level 2 Status pursuant to Section

XII.D of the General Permit which provides as follows: “A Discharger’s Level 1 status for any given parameter shall change to Level 2 status if sampling results indicate an NAL exceedance for that same parameter while the Discharger is in Level 1.” The acceleration to Level 2 status was precipitated by average levels of Iron from the Discharger’s sampling results taken during Fiscal Year 2016-2017; specifically, on December 15, 2016 and February 2, 2017.

The continued Iron exceedances are a strong indicator that BMP Deficiencies at the Facility are ongoing.

3. *Failure to Follow Monitoring and Sampling Procedures Pursuant to the General Permit*

Shamrock has failed since at least July 1, 2016, to conduct monthly and sampling event visual observations pursuant to Section X.I.A of the General Permit, and to complete the Monthly Inspection Forms as indicated in the General Permit.

Shamrock has also failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

As of the date of this Notice, Shamrock Materials has failed to upload into the SMARTS database system:

- a. One storm water sample analysis for the time period July 1, 2016, through December 31, 2016 (one sample was taken on 12/15/16). Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 10/14/16, 10/24/16, 10/27/16, 10/30/16, 11/19/16, 11/22/16, 11/26/16, 12/7/16, 12/15/16 and 12/23/16; and
- b. One storm water sample analysis for the time period January 1, 2017, through June 30, 2017 (one sample was taken on 2/2/17). Qualified Storm Events occurred in

the vicinity of the facility on at least the following relevant dates: 1/2/17, 1/20/17, 1/18/17, 2/2/17, 2/10/17, 2/22/17, 3/5/17, 3/20/17, 3/24/17, 4/6/17, 4/12/17, and 4/16/17.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII, which provides as follows:

**XVII. CONDITIONAL EXCLUSION - NO EXPOSURE CERTIFICATION (NEC)**

**A.** Discharges composed entirely of storm water that has not been exposed to industrial activity are not industrial storm water discharges. Dischargers are conditionally excluded from complying with the SWPPP and monitoring requirements of this General Permit if all of the following conditions are met:

1. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
2. All unauthorized NSWDS have been eliminated and all authorized NSWDS meet the conditions of Section IV;
3. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage pursuant to the instructions in Section II.B.2; and,
4. The Discharger has satisfied all other requirements of this Section.

*4. Failure to File A Complete Annual Report*

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Shamrock Napa's Annual Report uploaded into the SMARTS database system on July 11, 2017, for the reporting year ending June 30, 2016, was nothing more than a cover page indicating that Legally Responsible Person ("LRP") Dave Ripple had submitted a report, and was missing all the required elements listed above.

*5. Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge

of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Shamrock Materials, Inc. has violated and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

Shamrock Materials, Inc.’s sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels (“NALs”) for common parameters. A copy of Table 2 is included with this Notice.

Shamrock Materials, Inc.’s storm water analyses as indicated below contained levels for tested parameters in excess of Annual or Instantaneous NAL levels. The discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations.

<b>Date of Sample Collection</b>	<b>Drainage Collection Point</b>	<b>Parameter</b>	<b>Concentration in Discharge (mg/L)</b>	<b>NAL Annual or Instantaneous Value (mg/L)</b>
12/3/15	NW-1	Iron	2.0	1.0
12/10/15	NW-1	Iron	6.2	1.0
1/13/16	NW-1	Iron	1.2	1.0
12/5/16	NW-1	Iron	4.8	1.0
12/15/16	NW-1	TSS	130	100
2/2/17	NW-1	Iron	1.5	1.0

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

Potential pollutants from the Facility that may come in contact with storm water include the following: sediment, iron, grease and oil, cleaning fluids, and Portland cement. The Facility has two (2) designated storm water discharge points, and its storm water discharges indirectly into the San Francisco Bay, via the San Pablo Bay, waters of the United States.

The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

**III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entity responsible for the alleged violations is Shamrock Materials, Inc. (“the Discharger”), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

**IV. THE LOCATION OF THE VIOLATIONS**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Shamrock Materials, Inc. – Napa’s permanent facility address of 999 Kaiser Road (West End of Kaiser Road), in Napa, California, and includes the adjoining navigable waters of the Napa River and the San Pablo and San Francisco Bays.

**V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least December 3, 2015, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

**VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
*1645 Willow Street, #150*  
*San Jose, CA 95125*  
*Telephone: (408) 791-0432*  
*Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)*

## **VII. PENALTIES**

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the San Francisco Bay. Members of CEPA use the watershed and the Bay for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

## **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha  
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure



Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

**TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units**

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18<sup>th</sup> edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

\* Minimum parameters required by this General Permit

\*\*The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.